



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 2, 2002

### **S. 2010** **Corporate and Criminal Fraud Accountability Act of 2002**

*As ordered reported by the Senate Committee on the Judiciary on April 25, 2002*

#### **SUMMARY**

S. 2010 would create new crimes for persons who destroy records that could aid a federal investigation, people who commit securities fraud, or auditors who intentionally fail to retain certain audit records for five years. In addition, the bill would prohibit certain fines assessed for violations of securities laws from being discharged in bankruptcy proceedings. Under S. 2010, employees who aid the SEC with investigations of publicly traded companies and who are subsequently discriminated against by their employer would have access to the Occupational Safety and Health Administration's (OSHA's) program for investigating illegal discrimination and termination of whistleblowers.

CBO estimates that implementing S. 2010 would cost about \$2 million over the 2003-2007 period, subject to the availability of appropriated funds. The bill also would increase direct spending and receipts by less than \$500,000 a year; therefore, pay-as-you-go procedures would apply.

S. 2010 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. This legislation would impose private-sector mandates, as defined by UMRA, but CBO estimates that the direct cost of the mandates would fall well below the annual threshold established by UMRA (\$115 million in 2002, adjusted annually for inflation).

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

CBO estimates that implementing S. 2010 would cost about \$2 million over the 2003-2007 period, subject to the availability of appropriated funds. This bill also would increase direct spending and receipts by less than \$500,000 a year. The costs of this legislation fall within budget functions 370 (mortgage and housing credit) and 550 (health).

## **BASIS OF ESTIMATE**

For this estimate, CBO assumes that S. 2010 will be enacted before the start of fiscal year 2003, and that the necessary amounts will be appropriated each fiscal year. Components of the estimated costs are described below.

### **Spending Subject to Appropriation**

Under S. 2010, employees who provide information or otherwise assist investigations could file claims with OSHA in the event of discrimination or termination by their employer as a result of their whistleblowing activities. OSHA currently investigates whistleblower claims of discrimination against employers who violate occupational or environmental laws and regulations. To handle the additional claims that would arise if S. 2010 were enacted, CBO assumes OSHA would have to hire three additional employees. Subject to the availability of appropriated funds, CBO estimates that implementing the bill would cost less than \$500,000 in 2003 and about \$2 million over the 2003-2007 period.

Under S. 2010, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

### **Direct Spending and Revenues**

Because those prosecuted and convicted under S. 2010 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending would be less than \$500,000 each year.

S. 2010 also would affect revenues by preventing certain fines the SEC assesses for violations for securities laws from being discharged in bankruptcy proceedings. This provision would apply to disgorgement funds, under which the SEC collects payments from violators and distributes them directly to the victims of the violation. Typically, these disgorgement funds are deposited in the Treasury only if the administrative costs of distributing the funds to the victims are prohibitive. Under current law, a violator could escape paying disgorgement funds under bankruptcy proceedings. S. 2010 would no longer allow such payments to be discharged in bankruptcy, and therefore, in certain cases could result in an increase of receipts to the Treasury. CBO estimates that any such increase would not be significant.

## **PAY-AS-YOU-GO CONSIDERATIONS**

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 2006. Although, S. 2010 could affect both direct spending and receipts, CBO estimates that any such effects would be less than \$500,000 a year.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

S. 2010 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

S. 2010 would impose private-sector mandates, as defined by UMRA, but CBO estimates that the direct cost of the mandates would fall well below the annual threshold established by UMRA (\$115 million in 2002, adjusted annually for inflation).

The bill would impose a private-sector mandate by requiring that any accountant who conducts certain corporate audits to maintain all audit or review work papers for a five-year time period. According to the American Institute of Certified Public Accountants and industry representatives, the accounting industry currently retains financial statement working papers and records for seven years. Therefore, CBO estimates that the direct cost, if any, to comply with this mandate would be small.

The bill also would protect employees of certain publicly traded companies who provide information to the U. S. government (whistleblowers). Those companies would not be able to discharge, demote, suspend, threaten, harass, or discriminate against such employees in the terms and conditions of their employment. Based on information from the Occupational Safety and Health Administration, the agency that would enforce this provision, CBO estimates that those publicly traded companies would incur minimal, if any, direct cost to comply with the whistleblower protection requirements.

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